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IN REPLY REFER TO:

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Honorable Bob Graham
United States Senator
Post Office Box 3050
Tallahassee, FL 32315

Dear Senator Graham:

Thank you for your letter on behalf of Werner W. Haardt, Chairman, Cable Television Committee, Greater Naples Civic Association (GNCA), Naples, Florida.

Your constituent's comments in MM Docket 92-266, concerning cable rates, have been placed in the record of this proceeding.

Sincerely,

Roy J. Stewart

Roy J. Stewart
Chief, Mass Media Bureau

Enclosures

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02/05/93

LETTER REPORT

CONTROL NO.	DATE RECEIVED	DATE OF CORRESP	DATE DUE	DATE DUE OLA(857)
9300408	02/05/93	01/29/93	02/18/93	

TITLE	MEMBERS NAME	REPLY FOR SIG OF
Senator	Bob Graham	BC

CONSTITUENT'S NAME	SUBJECT
Werner Haardt	inq. re: rate regulation & 92 Cable Act

REF TO	REF TO	REF TO	REF TO
MMB	<i>DLR</i>	<i>C+I</i>	

DATE	DATE	DATE	DATE
02/05/93	<i>2-5-93</i>	<i>2-5</i>	

REMARKS: Respond to the attention of Sharon McLanahan in the Tallahassee, FL office.

5 FEB REC'D

Bob Graham
Florida

United States Senate
Washington, D.C.

Date 11/29/93

*MNB
CATV. letter
408*

**Federal Communications Commission
Office of Congressional Affairs
Room 808, 1919 M Street
Washington, D.C. 20554**

Enclosed is a letter from one of my constituents who has concerns which come under the jurisdiction of your agency.

I would appreciate your reviewing this situation and providing me with an appropriate response. Please direct your reply to:

**Sharon McLanahan
Office of Senator Bob Graham
Post Office Box 3050
Tallahassee, FL 32315**

904/422-6100

Your cooperation and assistance are appreciated.

With kind regards,

Sincerely,



United States Senator

Constituent's Name:

Mr. Werner Haardt

**GREATER NAPLES CIVIC ASSOCIATION
378 Goodlette Road S.
Naples, FL 33940**

TO: Jeremy Bronson, Office of Senator Bob Graham

FAX: 202 224-2237

FROM: Greater Naples Civic Association

FAX: 261-0071

TOTAL NUMBER OF PAGES TRANSMITTED: 8

COMMENTS: PLEASE CALL 813 262-2424 IF THIS TRANSMITTAL IS NOT PROPERLY RECEIVED.

Jeremy,

The FCC is proposing to adopt the "benchmark" method of setting rates for cable television. This will not accomplish what the Congress intended. Please ask Senator Graham to favor the return on investment method. Please see attached.

Thanks,

**Duke Haardt
Chairman
Cable Television Comm.**

GREATER NAPLES CIVIC ASSOCIATION
378 Goodlette Road South
Naples, Florida 33940

RESPONSE TO NOTICE OF PROPOSED RULEMAKING
FEDERAL COMMUNICATIONS COMMISSION

In the matter of

Implementation of
Sections of the Cable
Television Consumer
Protection and Competition
Act of 1992

MM Docket 92-266

BACKGROUND

The Greater Naples Civic Association (GNCA) is an independent, non-profit research and community action group with 660 members in the greater Naples, Florida, area. It was established in 1926. Since cable television was introduced in the Naples area in the late 1960's, GNCA has been a citizens' advocate.

OVERVIEW

GNCA sees cable television much like any other local government contractor. Cable television provides a

creating a "forced upgrade" situation.

The so-called "bulk rate" agreements have been disastrous to our community with multi-family rates now in effect as low as \$4.95 per month per unit for cable service packages for which single-family residents pay over \$30 per month. Local governments need the authority to assure that a cable operator does not use single-family service revenues to offset losses in the multi-family market.

Local governments have been unable to respond to either the rate or channel-lineup issues. Cable television is primarily a local issue. Therefore, maximum authority permitted under The 1992 Cable Act should be restored to local government.

SUMMARY OF POSITIONS ON FCC PROPOSALS

Effective Competition--GNCA agrees with FCC's position that local government be the authority to determine the existence or non-existence of "effective competition."

Franchise Authority Certification--GNCA agrees with the FCC's proposed procedures for franchise authority certification.

Regulation Basic Service Tier--GNCA disagrees with the FCC's proposed position to regulate basic service tiers by the "benchmarking" method, utilizing existing industry data to determine the "benchmark." GNCA believes that industry data is inadequate because of lack of any significant, mature "effective competition" in the United States and there are too many local variables for "benchmarking" to be an accurate and appropriate method. GNCA instead proposes the return-on-investment method, identifying appropriate and reasonable revenues, expenses and a rate or rates which provides a reasonable profit. There is considerable governmental experience regulating public utilities including benchmarks on profit levels from those industries whether they be telephone, electric, water and sewer or natural gas. We also urge rate rollback authority be granted local government, with additional authority to order rate refunds for excessive charges since the effective date of The Cable Act of 1992 in December, 1992.

Regulation of Expanded Service Tiers--GNCA disagrees with the FCC's proposed position of the "benchmarking" method on the same grounds enumerated above. We also urge the FCC to include in its rules the authority for rate rollback and rate refunds for excessive charges since the effective date of The Cable Act of 1992.

GNCA POSITIONS

EFFECTIVE COMPETITION

We find the FCC proposed rule that franchise authorities make the determination as to whether or not effective competition exists reasonable.

FRANCHISE AUTHORITY CERTIFICATION

We find reasonable the FCC proposed rule on franchise authority certification. The FCC's proposed safeguard that the franchise authority must file its intent with the franchise holder provides for the opportunity for filing of objections by the franchise holder. GNCA would also suggest that the franchise authority be required to authorize the filing with the FCC in a public meeting at which time public comments must be heard.

REGULATIONS GOVERNING RATES OF THE BASIC SERVICE TIER

GNCA supports a return-on-investment (cost-of-service) methodology for determining rates on the basic service tier. In doing so, we express concern over the FCC's proposed "benchmarking." The concept of "benchmarking" is one that we think is difficult if not impossible to establish in cable.

It has several inherent problems:

1. Benchmarking would depend upon an identifiable, bona fide competitive rate. The competition that has

- d. Basic service has not been the object of competition. Typically, satellite channels have been the appeal to the subscriber.
2. "Benchmarking" does not account for the fact that most cable programmers are owned by cable operators. Some cable programming costs with our cable operator have increased over 500% in the past five years. Cable programmers have become involved in "bidding wars" with broadcasters. The net result is consumers are now paying for programs they used to see on broadcast channels for free, i.e. NFL football. Admittedly, this issue is more pertinent in the discussion of the additional tier regulation but applies to the basic tier regulation as well. Regulators, in order to determine the appropriate rate, must have the authority to determine if the costs are reasonable, i.e. programming costs. The major cable companies who own cable programmers could decide if they can't make the profit they want in offering cable service they will make in cable programming. It is interesting to note that cable programmers advertising revenues have substantially increased while their rates to the cable systems have also dramatically increased.
3. We do not see how "benchmarking" could take into account the many factors which should provide for differences in rates based upon local operating conditions:
- a. penetration levels and homes per mile
 - b. advertising revenues and other sources of additional revenues such as pay per view, pay television, telecommunications services, tower rent, etc.
 - c. the age of the cable system
 - d. overall channel capacity and amenities of the cable system
- How does "benchmarking" differentiate by rates a community which wants a state-of-the-art 550 mhz two-way fiber optics system while another is satisfied with a 300 mhz, older coaxial system?
4. How will "benchmarking" address rate roll backs? Our cable operator is imposing an 8.5% increase
- after the effective date of the statute and only 65 days before the rules go into effect. Rate roll backs must be addressed in any formula.
5. "Benchmarking" does not define reasonable profit as required by the statute. Reasonable profit implies

that the cost of operation is identified and applied to some defined standard. What is that standard under the benchmark rates?

6. About 40% of the Naples area system is comprised of multi-family subscribers, many of whom have been granted deeply-discounted rates, resulting from so-called "competition" when SMATV operators entered the market. These rates are far below the single family rate--\$4.95 compared for expanded service with two outlets compared to the same level of service for single-family subscribers at \$30 per month. We believe the multi-family units on discounted rates are being subsidized by single-family units. This is not an uncommon situation wherein SMATV operators, free of regulation and the burden of serving less dense areas, have caused significant disruption in fairness in pricing between types of subscribers. How will "benchmarking" address this unique market condition? Basic service alone is rarely if ever offered by SMATV operators. Therefore, will reliable data be available on basic service charges? The Cable Act requires "a cable operator shall have a rate structure, for the provision of cable service, that is uniform through-out the geographic area." How is the FCC's benchmark rate going to address a uniform rate without considering rate of return? How will the benchmark rate protect the cable subscriber from cross subsidies between classes of subscribers? Local governments need the authority to keep cable operators from cross subsidizing classes of services.
7. How is "benchmarking" going to develop a fair standard

process is required by bond covenants and usually performed by consulting rate specialists.

Commissioners should also keep in mind that consumers are already paying for regulatory efforts of local governments through franchise fees. Frankly, since rate de-regulation in 1986, local governments have enjoyed a windfall because the regulatory requirements were significantly reduced but the franchise fees were not in our area.

We do suggest that the FCC could simplify the process of return on investment by establishing the process and factors thereof which are usually the basis of dis-

of-return (cost of service) procedures were adopted, we suggest that this can be remedied by requiring that cable operators be obligated to provide the required data to local franchise authorities and those authorities be required to reasonably assist in filing the complaint.

3. We do not find any appropriate justification for restraint of release of financial information by the cable operator to the franchise authority. The mere fact that the cable operator is regulated indicates there is no significant competition. Therefore, the proprietary argument is not a valid one. This disclosure should include rates paid to programmers to protect consumers from unreasonable programmer rates, the majority of which are owned, at least in part, by cable operators. Most cable franchises already have requirements for financial statement disclosure.
4. We agree with the FCC proposal that it does have the authority to rollback rates, regardless of when those rates were adopted. However, we disagree that the FCC does not have the authority to require rate refunds for rate increases adopted before rate regulations were adopted. The FCC has the authority to require rate refunds from increases adopted after the effective date of the Act.
5. Any and all regulation and data collection should be by franchise, or in the event franchise authorities have created a consortium, by that unit.

Submitted by,

Werner W. Haardt
Werner W. Haardt

Chairman

Cable Television Committee

Greater Naples Civic Association

378 Goodlette Road South

Naples, FL 33940

813 262-2424